

DOCUMENT: 18058110

Pages: 14

RECORDING REQUESTED BY:)
WIX/NSJ Real Estate Limited Partnership)
c/o Legacy Partners Commercial, Inc.)



Fees.... * No Fees
Taxes...
Copies.. _____
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WHEN RECORDED, MAIL TO:)

Barbara J. Cook, P.E., Chief)
Department of Toxic Substances Control)
Northern California - Coastal)
Cleanup Operations Branch)
700 Heinz Avenue, Suite 200)
Berkeley, California 94710-2721)

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
State Agency

RDE # 005
10/21/2004
8:57 AM

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT AND AGREEMENT FOR ENVIRONMENTAL RESTRICTION
(Civil Code section 1471(c)) and (Health and Safety Code section 25355.5)

(Re: Legacy TechPark @ 237, San Jose, Santa Clara County, California,
Parcel#s: 15-34-27, 15-34-28, 15-34-81, 15-34-82, 15-34-83, 15-34-84 & 15-34-90)

This Covenant and Agreement for Environmental Restriction ("Covenant") is made by and between WIX/NSJ Real Estate Limited Partnership, a Delaware limited partnership (the "Covenantor"), the current owner of property situated in the community of Alviso, San Jose, County of Santa Clara, State of California, described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"), and the California Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("HSC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471 and HSC section 25355.5 that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of the U.S. Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property (Parcels 1 & 2, East Parcel), totaling approximately 17.53 acres, is more particularly described and depicted in Exhibit "A". The Property is located in Santa Clara County in the State of California, in the area now generally bounded by Summerset Mobile Estates to the north, the right of way of Highway 237 to the south, the Guadalupe River/Alviso Slough and wetlands adjacent to the river to the east, and Gold Street to the west. This property is more specifically described as Santa Clara County Assessor's Parcel Numbers: 15-34-27, 15-34-28, 15-34-81, 15-34-82, 15-34-83, 15-34-84, and 15-34-90.

1.02. Hazardous substances, as defined in HSC section 25316; section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601(14); and 40 Code of Federal Regulations ("C.F.R.") §§ 261.3 and 302.4 remain on portions of the Property, namely asbestos and/or asbestos containing material. These substances are also hazardous materials as defined in HSC section 25260.

1.03. The Property is a portion of the South Bay Asbestos Area National Priorities List (NPL) Site (Site ID No. 0902250; CERCLIS: CAD980894885). Portions of the Site other than the Property continue to be remediated pursuant to a Record of Decision ("ROD") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. Sections 9601 et seq., and with the National Contingency Plan (40 C.F.R. Part 300), administered by U.S. EPA. Covenantor is maintaining an environmental remedy that is in place on the Property under the supervision and authority of U.S. EPA.

1.04. In the 1980's, U.S. EPA circulated for public review and comment a Remedial Investigation Report, Feasibility Study and Proposed Plan, which contains a Final Health Risk Assessment, for the Site. The ROD for the Site was approved by U.S. EPA on September 29, 1989. Remediation under the ROD includes maintenance of a "Cap" consisting of buildings and pavement on portions of the Property and 18 inches of clean soil on the landscaped surfaces of the Property. The locations of the buildings and paved areas are shown on Exhibit B. The operation and maintenance of the Cap is being conducted pursuant to the Agreement and Covenant Not To Sue, U.S. EPA Docket No. 97-15, and a Soil Management Plan, dated August 27, 1997, and Title 27, California Code of Regulations, Division 2, Sections 20060, et. seq. Certain hazardous substances, as defined in HSC section 25316, which are also hazardous materials as defined in HSC section 25260, namely asbestos and/or asbestos containing materials, remain in the soil in and under portions of the Property. Previously, portions of the Property had been used as a landfill. The ROD provides that deed restrictions on former landfills be required as part of Site remediation.

1.05. The Covenantor entered into this Agreement in connection with the "Agreement and Covenant Not to Sue, U.S. EPA Docket No. 97-15," ("Agreement and Covenant Not to Sue") which Covenantor entered into with U.S. EPA when it acquired the Property. To control possible risk of exposure to asbestos and/or asbestos

containing materials by workers engaged in construction of development at the Property and future activities that may disturb the Cap, soil control measures were prescribed in the August 27, 1997 Soil Management Plan. The Soil Management Plan defines and describes procedures that the Covenantor and any contractor performing work at the Property are required to follow during and after construction. The Soil Management Plan was based on the review of the various subsurface soil investigations carried out at the Site and was prepared to comply with the requirements imposed on the Covenantor by the Agreement and Covenant Not To Sue. The Department concurred with the Soil Management Plan on August 21, 1997.

106. The restrictions set forth in this Covenant are intended to protect future users from exposure to asbestos and/or asbestos containing material which will remain in Site soils after soil remediation is complete.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at the time hold title to, or an ownership interest in, all or any portion of the Property.

2.04. Occupant. "Occupant" means any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA is the CERCLA Lead Agency at the time of the recording of this Covenant.

2.06. Improvements. "Improvements" means all Property improvements, including but not limited to, all buildings, roads, driveways, and paved parking areas.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to HSC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the

Department; (d) is for the benefit of U.S. EPA; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Each Owner and, to the extent provided by this Covenant, each Occupant of the Property is expressly bound hereby for the benefit of the Department. Pursuant to HSC section 25355.5, this Covenant binds all owners of the Property, their heirs, successors, and assigns, and the agents, employees, and lessees of the owners, heirs, successors, and assigns. Each Owner and, to the extent provided in this Covenant, each Occupant of the Property is bound by and must comply with the restrictions and requirements of this Covenant, but only as to that portion of the Property it owns or occupies and only for the period of its ownership or occupancy.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of the Property, or any portion thereof, an Owner, lessor, assignor, or other transferor shall give a buyer, lessee, assignee, or other transferee written notice that asbestos, which is a hazardous substance, may be located on or beneath the Property.

3.04. Incorporation into Deeds, Leases, and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, assignments, or other transfers of all or any portion of the Property which are hereafter executed or renewed. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A COVENANT AND AGREEMENT FOR ENVIRONMENTAL RESTRICTION, RECORDED IN THE PUBLIC LAND RECORDS ON ____[DATE]____, IN BOOK ____, PAGE ____, FOR THE BENEFIT OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND FOR THE BENEFIT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

3.05. Conveyance of Property. An Owner shall provide notice to the Department and to U.S. EPA not later than thirty (30) days after any conveyance or other transfer by said Owner of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance or transfer, except as otherwise provided by law.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. Future use of the Property shall be restricted to industrial and/or commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management. Any soils contaminated with asbestos or asbestos-containing materials brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal law, and will not be removed from the Property without following a Soil Management Plan approved by the CERCLA Lead Agency.

4.03. Non-Interference with Cap.

- (a) Activities that may disturb the Cap, except in compliance with a Soil Management Plan approved by the CERCLA Lead Agency, shall not be permitted on the Property without prior written approval by the CERCLA Lead Agency.
- (b) All uses and development of the Property shall preserve the integrity of the Cap.
- (c) The Cap on the Property shall not be altered without prior written approval by the CERCLA Lead Agency, unless such alteration is already permitted by the Soil Management Plan approved by the CERCLA Lead Agency.

4.04. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, periodic reviews, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety or the environment. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions under CERCLA, the National Contingency Plan, 40 C.F.R. Part 300 and its successor provisions, or federal law.

4.05 Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities relating to the Cap shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities. Such right of entry and access shall continue until such time as the CERCLA Lead Agency determines that such activities are no longer required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. The Department shall be entitled to enforce the terms of this instrument. This Covenant shall be enforceable by the Department pursuant to HSC, Division 20, Chapter 6.5, Article 8 (commencing with section 25180). Failure of an Owner or Occupant to comply with any provision of this Covenant shall be grounds for the Department to seek a court order enjoining the Owner or Occupant from violating this Covenant or directing the Owner or Occupant to comply with this

Covenant. Compliance may include, to the extent appropriate, modification or removal of any improvements constructed or placed upon any portion of the Property in violation of the Restrictions. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA, and violation of this Covenant shall be grounds for the Department to file civil or criminal actions, as provided by law or equity.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person (including an Owner), may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with HSC section 25233. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no variance may be granted under this paragraph 6.01 without prior review and prior concurrence of the variance by U.S. EPA. Any approved variance shall be recorded in accord with HSC section 25233(f).

6.02. Termination. Covenantor, or any other aggrieved person (including an Owner), may apply to the Department for a termination of the restrictions set forth in Article IV or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with HSC section 25234. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no termination may be granted under this Paragraph 6.02 without prior review and prior written concurrence of the termination by U.S. EPA. Termination of this Covenant shall be recorded in accord with HSC section 25234(d).

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, after review and prior written concurrence by U.S. EPA, this Covenant shall continue in effect in perpetuity.

6.04 Non-liability for Subsequent Acts. Covenantor, any Owner or any Occupant shall not be liable for any breach or violation of this Covenant that occurs subsequent to its respective ownership or occupancy.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication or Taking. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) business days of the

Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Barry DiRaimondo
WIX/NSJ Real Estate Limited Partnership
c/o Legacy Partners Commercial, Inc.
4000 East Third Avenue
Foster City, California 94404

To DTSC: Barbara J. Cook, P.E., Chief
Department of Toxic Substances Control
Northern California-Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

To EPA: Eric Yunker
Superfund Division (SFD-7-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901
Re: South Bay Asbestos Area Superfund Site

and:

Bethany Dreyfus
Office of Regional Counsel (ORC-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901
Re: South Bay Asbestos Area Superfund Site

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If any portion of the Restrictions or other term set forth herein, or the application of it to any person or circumstance, is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant, or the application of such portions to persons or circumstances other than those to which it is found to be invalid, shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument

is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

7.06. Statutory References. All statutory references include successor provisions.

7.07. Third Party Beneficiary. U.S. EPA's rights as a third party beneficiary of this Covenant shall be construed pursuant to principles of contract law under the statutory and common law of the State of California.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

WIWNSJ Real Estate Limited Partnership,
A Delaware limited partnership,

By: WIWNSJ Gen-Par, Inc.,
A Delaware corporation

By: 

Its: Vice President

Department of Toxic Substances Control

By: 

Date: 10/14/2004

Title: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Mateo

} ss.

On

Aug 31, 2004

Date

before me,

Brenda L. Moran, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Paul J. Meyer

Name(s) of Signer(s)

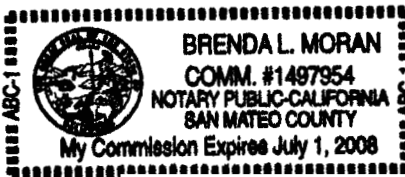


personally known to me



proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Brenda L. Moran

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document:

Covenant and Agreement for Environmental Restriction

Document Date:

8/30/04

Number of Pages:

9

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

Paul J. Meyer

☐ Individual

☒ Corporate Officer — Title(s):

CFO

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

Legacy Partners Commercial Inc.

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of CALIFORNIA

County of ALAMEDA

On 10/14/04

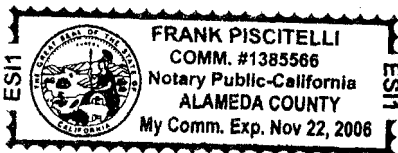
before me, FRANK PISCITELLI

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared BARBARA JEAN COOK

Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: WILL

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

PARCEL ONE:

All that certain real property in the City of San Jose, County of Santa Clara, State of California, more particularly described as follows:

Parcel A as shown on that certain map entitled "Parcel Map, being a resubdivision of Parcel 1 of that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on September 29, 1998 in Book 708 of Maps, pages 33-37 and that parcel of land as conveyed in that certain document recorded April 10, 2000 Instrument No. 15208783, Santa Clara County Records" which map was filed for record on January 30, 2003 in Book 757 of Maps, pages 46, 47 and 48, Records of Santa Clara County.

PARCEL TWO:

All that certain real property partially in the unincorporated area of the County of Santa Clara and partially in the City of San Jose, County of Santa Clara, State of California, more particularly described as follows:

Parcels B and C as shown on that certain map entitled "Parcel Map, being a resubdivision of Parcel 1 of that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on September 29, 1998 in Book 708 of Maps, pages 33-37 and that parcel of land as conveyed in that certain document recorded April 10, 2000 Instrument No. 15208783, Santa Clara County Records" which map was filed for record on January 30, 2003 in Book 757 of Maps, pages 46, 47 and 48, Records of Santa Clara County.

PARCEL THREE-A

All that certain real property in the City of San Jose, County of Santa Clara, State of California, more particularly described as follows:

Parcel 2, as shown on that certain map entitled "Parcel Map, being a portion of the Ulistac and Embarcadero de Santa Clara Ranchos" which map was filed for record September 29, 1998 in Book 708 of Maps, pages 33, 34, 35, 36 and 37, Santa Clara County Records.

PARCEL THREE-B:

Non-exclusive easements for construction, maintenance, repair, replacement and use of a storm drainage system, together with the right to enter upon certain adjoining land for such purposes, and temporary non-exclusive easements for construction of a storm drainage system, as reserved by Trans County Transport, a California corporation, and described in the Grant Deed to the Santa Clara County Transit District recorded September 4, 1997, Instrument No. 13843161, and in the Grant of Easement by said Santa Clara County Transit District recorded September 4, 1997, Instrument No. 13843162, Official Records.

EXHIBIT A

Owner's Statement

We hereby state that we are the owners of or have some right, title or interest in and to the real property included within the subdivision shown on the map; that we are the only persons whose consent is necessary to pass a clear title to said real property; that we hereby consent to the making of said map and subdivision as shown within the distinctive border line; and that we hereby offer for dedication to public use all streets and portions of streets not previously existing as shown on the map within said subdivision.

We also hereby dedicate to public use easements for any and all public service facilities including poles, wires, conduits, gas, water, heat mains and all appurtenances to the above, under, upon, or over those certain strips of land lying between the front and/or side lines of lots and the dashed lines and/or those certain areas lying between dashed lines each designated as "PSE" (Public Service Easement). The above mentioned public service easements to be kept open and free from buildings and structures of any kind except public service structures, irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs.

There is also shown on the hereon map, easements for storm drainage purposes and sanitary sewer purposes designated and delineated as "PSDE" (Private Storm Drainage Easement) "PSSE" (Private Sanitary Sewer Easement) for the installation and maintenance of private storm and private sanitary sewer facilities. These easements are to be kept open and free from all buildings and structures of any kind, except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs. The maintenance, repair and/or replacement of private storm drainage and private sanitary sewer facilities shall be the sole responsibility of the property owners benefited, as determined by the appropriate covenants, conditions, and restrictions. Said easements are not offered, nor are they accepted, for dedication by the City of San Jose.

As Owner: WX/NSJ Real Estate Limited Partnership, a Delaware Limited Partnership

By: WX/NSJ Gen-Por, Inc.
a Delaware limited partnership
its general partnership

By: BARRY D. RAMONDO
PRINT NAME & TITLE

As Trustee: First American Title Insurance Company, a California Corporation

By: MICHAEL D. HICKS, ASST VP.
PRINT NAME & TITLE

Acknowledgement

State of California SS.
County of SAN MATEO

On SEPTEMBER 14, 2002, 2002 before me, the undersigned, a notary public in and for said state, personally appeared

BARRY D. RAMONDO
proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand

Notary's Signature MARILYN A. HIERRO
Printed Notary's Name MARILYN A. HIERRO
Notary's Principal Place of Business SAN JOSE, CALIFORNIA
Expiration of Notary's Commission NOV. 4, 2005

Acknowledgement

State of California SS.
County of Santa Clara

On November 14, 2002 before me, the undersigned, a notary public in and for said state, personally appeared

Michael D. Hicks
proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand

Notary's Signature Carol L. Weiss
Printed Notary's Name Carol L. Weiss
Notary's Principal Place of Business Santa Clara County
Expiration of Notary's Commission MARCH 12, 2003

Statement of Acceptance

I hereby accept for the City of San Jose the dedication of all easements offered for dedication as shown on said map within the distinctive borderline.

Date: 1-21-03



Note: Soil and Geological Report

A soils report and/or geological report on this property has been prepared by Earth Systems Consultants, dated August 1997, a copy of which has been filed with the City Clerk of the City of San Jose.

City Engineer's Statement

I hereby state that I have examined the hereon parcel map; that the subdivision as shown hereon is substantially the same as it appeared on the tentative map and any approved alterations thereto; that all provisions of the Subdivision Map Act, as amended, and of any local ordinance applicable at the time of approval of the tentative map have been complied with and I am satisfied that said map is technically correct.

Date: 1-21-03

David J. Clarke
DAVID J. CLARKE RCE # 30315
City of San Jose, California
RCE Expiration Date: 03/31/04



PARCEL MAP

BEING A RESUBDIVISION OF PARCEL 1 OF THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF M E COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 29, 1998 IN BOOK 708 OF MAPS, PAGES 33-37 AND THAT PARCEL OF LAND AS CONVEYED IN THAT CERTAIN DOCUMENT RECORDED APRIL 10, 2000 INSTRUMENT NO. 15208783, SANTA CLARA COUNTY RECORDS AND LING WITHIN THE CITY OF SAN JOSE COUNTY OF SANTA CLARA STATE OF CALIFORNIA

SEPTEMBER, 2002
CONSISTING OF 3 SHEETS

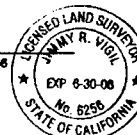
KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.

Surveyor's Statement

This map was prepared by me or under my direction and is based on a field survey and compiled from record data in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of WX/NSJ Real Estate Limited Partnership. In July, 2002, I hereby state that this Parcel Map substantially conforms to the approved or conditionally approved tentative map, if any; that the survey is true and complete as shown; that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before July, 2003. The monuments are, or will be, sufficient to enable the survey to be retraced.

Date: 9/19/02

James R. Ugo
James R. Ugo L.S. 8258
Expires 08-30-08

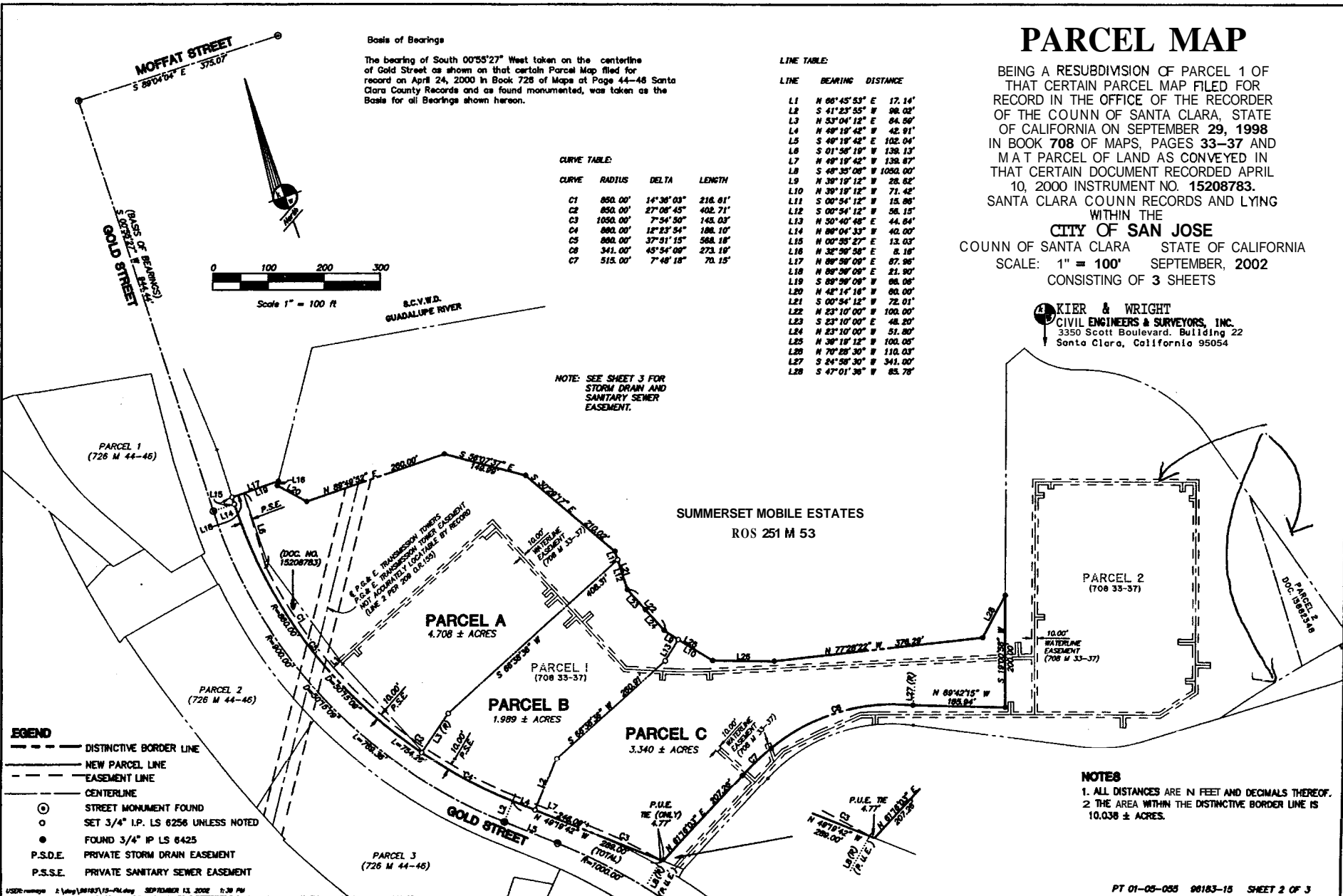


Recorder's Statement

File No. 46-48 Fee \$ 12.00 Paid. Accepted for record and filed in Book 157 of Maps at Pages 46-48, Santa Clara County Records, this 30th day of January, 2003 at 2:27 P.M. at the request of Kier & Wright, Civil Engineers & Surveyors, Inc.

Brandi Davis, County Recorder
Santa Clara County, California

By: Brandi Davis
Deputy

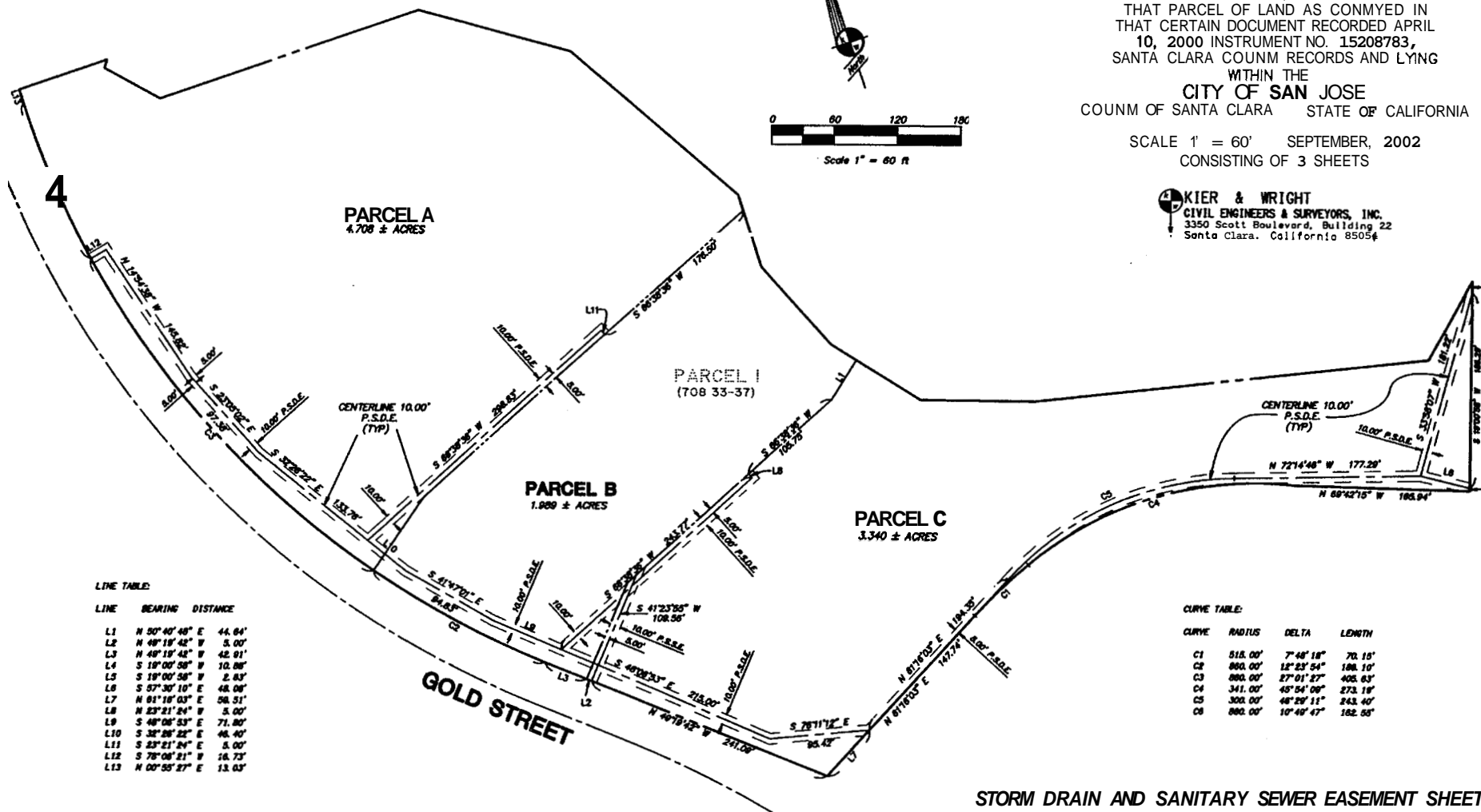
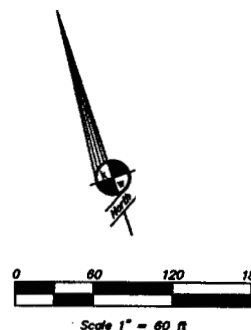


PARCEL MAP

BEING A RESUBDIVISION OF PARCEL 1 OF
THAT CERTAIN PARCEL MAP FILED FOR
RECORD IN M E OFFICE OF THE RECORDER
OF THE COUNTY OF SANTA CLARA, STATE
OF CALIFORNIA ON SEPTEMBER 29, 1998
IN BOOK 708 OF MAPS, PAGES 33-37 AND
THAT PARCEL OF LAND AS CONMYED IN
THAT CERTAIN DOCUMENT RECORDED APRIL
10, 2000 INSTRUMENT NO. 15208783,
SANTA CLARA COUNM RECORDS AND LYING
WITHIN THE
CITY OF SAN JOSE
COUNM OF SANTA CLARA STATE OF CALIFORNIA

SCALE 1" = 60' SEPTEMBER, 2002
CONSISTING OF 3 SHEETS

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22
Santa Clara, California 95054



LINE TABLE:

LINE	BEARING	DISTANCE
L1	N 50° 40' 48" E	44.84'
L2	N 48° 19' 42" W	5.00'
L3	N 48° 19' 42" W	42.91'
L4	S 19° 00' 58" W	10.86'
L5	S 19° 00' 58" W	2.83'
L6	S 57° 30' 10" E	48.08'
L7	N 01° 19' 03" E	58.51'
L8	N 23° 21' 24" W	5.00'
L9	S 48° 08' 53" E	71.80'
L10	S 32° 28' 22" E	46.40'
L11	S 23° 21' 24" E	5.00'
L12	S 78° 08' 21" W	16.73'
L13	N 00° 55' 27" E	13.03'

CURVE TABLE:

CURVE	RADIUS	DELTA	LENGTH
C1	515.00'	7° 48' 18"	70.15'
C2	800.00'	12° 23' 54"	188.10'
C3	800.00'	27° 01' 27"	405.63'
C4	341.00'	45° 54' 09"	273.18'
C5	300.00'	48° 28' 11"	243.40'
C6	880.00'	10° 48' 47"	162.95'

STORM DRAIN AND SANITARY SEWER EASEMENT SHEET

767
18/48